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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service
Washington, D.C. 20250

AMS INSTRUCTION 116-2
Rev. 1

AUG 4 '77

ACTION BY: All Divisions and Offices, AMS, P&SA, and FGIS

Appearance in Judicial Proceedings for Witness Service

I PURPOSE

This Instruction:

A Sets forth procedures on the appearance of employees as witnesses in judicial proceedings.

B Prescribes the collection and disposition of attendance fees and payment of travel and subsistence expenses in connection with such appearances.

C Explains the leave status of employees who testify.

II DEFINITIONS

A The term "judicial proceedings" means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature, including an agency proceeding as defined below, but does not include administrative proceedings not so defined.

B The term "agency proceeding" means a proceeding before a Federal agency for rule making, adjudication (formulation of an agency order), or licensing.

C The term "fees" means the amount allowed as pay for attendance at judicial proceedings.

D The term "travel expenses" means the amount allowed for transportation, lodging, meals, and other miscellaneous expenses related thereto.

III INVOLVEMENT IN PRIVATE LITIGATION

Employees are encouraged to make all reasonable efforts to avoid appearance as expert witnesses in private litigation. Advance alertness with respect to initial inquiries or "feelers" by litigants will often forestall a subpoena. This policy is intended to further the type of public service expected of employees by avoiding the appearance of favoring one litigant over another. Any employee served with a subpoena must appear, or be held in contempt of court.

DISTRIBUTION:

A,M,O,S,P,F

MANUAL MAINTENANCE INSTRUCTIONS:

Revised to update. Remove AMS Instr. 116-2, dated 5-7-73. File this Revision.

Page 1

July 15, 1977

IV DELEGATION OF AUTHORITY

Division Directors, AMS and FGIS, and the Executive Assistant, P&SA, are hereby delegated authority to:

- A Receive notification submitted by employees who have been requested or subpoenaed to appear as witnesses in judicial proceedings.
- B Approve or disapprove appearance of employees as witnesses, consulting with the Office of the Administrator on cases where necessary.

V TESTIMONY IN JUDICIAL PROCEEDINGS

For purposes of this Instruction, judicial proceedings involving the appearance of employees fall in the following groups:

- A Employees testifying for the United States or a State or local government in judicial proceedings arising within the Department or growing out of the violation of laws of a State or subdivision thereof in the enforcement of which employees have been authorized to assist - no subpoena necessary.
- B Employees testifying for the United States or the District of Columbia in legal proceedings not arising within the Department - no subpoena necessary.
- C Judicial proceedings in which the United States is a party in interest but the employee is not testifying in its behalf - subpoena required.
- D Judicial proceedings not covered by paragraphs A, B, and C, above, but in which the employee is called upon solely because of, or to testify in, his official capacity or to produce official records or information, or to testify as an "expert" witness where the value of his testimony arises from knowledge gained in his official capacity. Appearance may not be made without subpoena except in proceedings before State or Federal regulatory bodies when the Administrator or his designee determines that appearance is in the interest of the Department.
- E Proceedings in which the State or local government is a party, and the employee is testifying in its behalf but not in his official capacity. (Government has no interest in this type of case.)
- F Judicial proceedings not covered by any of the foregoing groups.

VI ACTION BY EMPLOYEE

A An employee who is called upon to testify (whether or not subpoenaed) in any judicial proceeding of the types listed in Section V, paragraphs A through D, above, shall immediately notify his supervisor, who in turn shall notify the Division Director. A telegram shall be used where warranted.

B An employee who is called upon to appear as a witness in a judicial proceeding of the types in Section V, Paragraphs C or D, above, shall provide his supervisor with the information listed below before appearing for witness service. The information should be provided by telephone if time does not permit communication by any other means.

- 1 Names of parties involved.
- 2 Matter in suit.
- 3 Nature of the testimony the employee expects to give.
- 4 Name of the court, body, or official issuing the subpoena or requesting the testimony.
- 5 Date and place of appearance.
- 6 Nature of any record or material employee has been asked or anticipates to be asked to produce or disclose.

VII DISCLOSURE OF CERTAIN TYPES OF MATERIAL FORBIDDEN

A An employee testifying in a judicial proceeding shall not disclose any record or material which is classified "For Official Use Only" or any record or material that has not been released for publication.

B If directed by the court, body, or official to do so, the employee shall respectfully decline until permission is granted by his Division Director. If permission is not granted, the employee shall so notify the requesting court, body, or official.

VIII DISPOSITION OF FUNDS

A Employees reimbursed for witness service shall forward to their supervisors or officers in charge a check or money order in the amount received for witness service, made payable to the appropriate Agency (i.e., Agricultural Marketing Service - USDA, or Federal Grain Inspection Service - USDA).

(VIII)

B Supervisors or Officers in Charge shall attach the check or money order to Form AMS-542, Accounting Authorization and Classification (Apron), containing the statement "Witness Fee" in the "Remarks" block. Send Form AMS-542 with check or money order attached to:

USDA - AMS
Fiscal Operations and Services Branch
Financial Services Division
14th & Independence Ave., SW
Washington, DC 20250

C The Fiscal Operations and Services Branch, Financial Services Division, shall deposit the funds to the credit of the appropriation or fund from which the employee is paid compensation as a Government employee.



Irving W. Thomas
Deputy Administrator, Management

Attachment

Employee Absences for Witness Service

NATURE OF WITNESS SERVICE	TYPE OF ABSENCE		COLLECTION & DISPOSITION OF ATTENDANCE FEES			GOVERNMENT TRAVEL EXPENSE	
	Court Leave	Official Duty	Annual Leave or LWOP	Y E S		No	Yes
				Retain	Turn in to AMS		
A Proceedings arising within Department or growing out of the violation of laws of a State or subdivision thereof in the enforcement of which employee of AMS has been authorized to assist.		X					Paid from Agency funds unless other arrangements have been made between cooperating State or sub-division thereof and the Department.
B Proceedings not arising within the Department at which an employee testifies for the United States or District of Columbia.		X					
C Proceedings in which the United States is a party in interest but the employee is not testifying in its behalf.							
1. in official capacity or as an expert witness.		X			X		X
2. not in official capacity or as an expert witness.			X			X	
D Proceedings not covered by A, B, or C but in which the employee is called upon to testify in an official capacity or as an expert witness.		X			X		X
E Proceedings on behalf of a State or local government where employee is not testifying in his official capacity.	X				X	X	
Proceedings not covered by any one of the foregoing groups.			X			X	

